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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,712	06/16/2006	Aaron R. Reynolds	GOJ.P.100.US	7956

7590 06/05/2009
Andrew B. Morton and Ray L. Weber
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First National Tower, Fourth Floor
Akron, OH 44308-1456

EXAMINER

NICOLAS, FREDERICK C

ART UNIT	PAPER NUMBER
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3754

MAIL DATE	DELIVERY MODE
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06/05/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/549,712

Applicant(s)

REYNOLDS ET AL.

Examiner

Frederick C. Nicolas

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 21-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4-19, 21-27 and 29 is/are allowed.
- 6) ☒ Claim(s) 1-3 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3,28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maddox 6,390,329 in view of Amsler 6,398,513.

Maddox discloses an apparatus (10) for dispensing a measured quantity of fluid, which comprises an object sensor (42), a valve (32), a container (36), a dispense mechanism (28) coupled to the container to control an amount of fluid to be dispensed, a pump actuator (40), a hidden switch (168) carried by the container, wherein actuation of the hidden switch enables a processor to enter an operational feature mode (col. 6, ll. 58-67, please note that the apparatus of Maddox has an inherently processor which activates and deactivates the motor and its associated components), a timer (col. 6, ll. 58-67 onto 7, ll. 1-10), at least one illuminating indicia connected to the processor wherein entry into the operational feature mode is indicated by the at least one illuminating indicia (col. 6, ll. 34-44), at least two lights (156,158,160). Maddox lacks an apparatus indicator. Amsler et al. teach the used of an apparatus position indicator (58) to sense the position of a product sensor (54), where the apparatus position indicator includes at least one illumination device (col. 4, ll. 31-42). Note: the applicant is advised that any action following the words "wherein" or "to prevent inadvertent" in the claims

indicates an intended use for the product and does not limit the structure of the product in the claims. Therefore, the examiner is giving no patentable weight to any intended use/functional limitations, since the reference of Amsler et al. disclose the structure limitation of a position indicator (58), then, Amsler et al. is capable of performing all of the intended use/functional limitations in claim 1.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus position indicator of Amsler et al. onto the apparatus of Maddox, in order to sense the position of the apparatus position indicator, as taught by Amsler in (col. 4, ll. 31-42).

Allowable Subject Matter

3. Claims 4-19,21-27,29 are allowed.

Response to Arguments

4. Applicant's arguments filed 3/4/2009 have been fully considered but are moot in view of the new ground(s) of rejection. However, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Maddox discloses an apparatus (10) for dispensing a measured quantity of fluid, which comprises an object sensor (42), a valve (32), a

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container (36), a dispense mechanism (28) coupled to the container to control an amount of fluid to be dispensed, a pump actuator (40), a hidden switch (168) carried by the container, wherein actuation of the hidden switch enables a processor to enter an operational feature mode (col. 6, ll. 58-67. Maddox lacks an apparatus indicator. Amsler et al. teach the used of an apparatus position indicator (58) to sense the position of a product sensor (54), where the apparatus position indicator includes at least one illumination device (col. 4, ll. 31-42). One having ordinary skill in the art at the time the invention was made would utilize the teaching of Amsler et al. onto Maddox's apparatus by providing the apparatus position indicator of Amsler et al. onto the apparatus of Maddox, in order to sense the position of the apparatus position indicator, as taught by Amsler in (col. 4, ll. 31-42). Any remaining arguments have been fully addressed in the above rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (571)-272-4931. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Frederick C. Nicolas/
Primary Examiner, Art Unit 3754